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In re Application of MYERS et al. :
Application No.: 09/673,133 :
PCT No.: PCT/CA99/00307 :
Int. Filing: 12 April 1999 :
Priority Date: 14 April 1998 : DECISION ON PETITION
Attorney Docket No.: 1038-1102 MIS :
For: TRANSFERRIN RECEPTOR GENES OF :
MORAXELLA :

This is a decision on applicant's second renewed petition under 37 CFR 1.47(a) filed in the United States Patent and Trademark Office (USPTO) on 11 June 2002 and treated as a petition to accept the declarations under 37 CFR 1.497.

BACKGROUND

On 30 April 2001, applicant, in response to 31 October 2000 Notification of Missing Requirements, filed a petition in an attempt to satisfy the requirements of 35 U.S.C. 371(c)(4). The petition requested the acceptance of the application without the signature of inventor. Run-Pan Du on the grounds that the non-signing inventor refused to execute the declaration.

On 07 September 2001, a decision on petition was mailed to applicant dismissing the petition on the grounds that applicant had not provided factual proof that the non-signing inventor refused to execute the application and an acceptable declaration signed by the 37 CFR 1.47(a) applicants on behalf of the non-signing inventor. On 03 January 2002, applicants filed a renewed petition under 37 CFR 1.47(a) along with a declaration executed by all the inventors, including Run-Pan Du. The renewed petition under 37 CFR 1.47(a) was considered moot as a declaration executed by all the inventors was submitted. However, the declaration did not meet the requirements of 37 CFR 1.497.

On 11 June 2002, applicants filed the instant petition including two declarations signed by the inventors.

DISCUSSION

The two complete declarations, submitted on 11 June 2002, identify each inventor and state the citizenship, residency and mailing address of each inventor. It is apparent, based on the signature pages, that these are not newly executed declarations but rather were formed from the previously submitted defective declaration. Applicant states that "enclos[ed are] two separate different Declarations with the appropriate signature pages" but does not indicate that these are, in fact, complete copies of the declarations actually executed by the inventors. An explanation is required to explain whether the two separate declarations now submitted were generated from the single previously filed defective declaration (in which case, a newly executed oath/declaration is required) or whether the two declarations are in fact true copies of complete declarations actually executed by the inventors.

CONCLUSION

For the above reasons, the request to accept the declarations under 37 CFR 1.497 is **dismissed without prejudice**.

Applicant has **ONE** (1) month to provide the explanation and if necessary, a newly executed oath/declaration as indicated above. Extensions of time are available under 37 CFR 1.136(a). Failure to timely file the proper reply will result in abandonment of the application.

The application will be held in the PCT Legal Office to await the proper reply.

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT Legal, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office.



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